

MF 96-12

Tax Type: MOTOR FUEL USE TAX

Issue: Failure to Have Motor Fuel Use Tax Decal/Permit

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket #
v.)	Assessment #
)	
TAXPAYER)	Daniel D. Mangiamele
)	Administrative Law Judge
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Synopsis

This matter comes on for hearing pursuant to the taxpayer's timely protest of penalty assessment No. XXXXX issued by the Department on July 28, 1995 for motor fuel tax license and decal violations. Taxpayer was found on June 14, 1994 to be operating in Illinois without a valid permit and without properly displaying decals. At issue is whether taxpayer operated a commercial vehicle in Illinois without registering and securing an Illinois motor fuel tax license and decal. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department of Revenue.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Tax Liability and Illinois Commerce Commission police written warning no. 038875 showing a total penalty liability due and owing in the amount of \$1,000.00. Dept. Ex. No. 1 and Ex. No. 2

2. Taxpayer was not registered for a motor fuel tax license.

3. Taxpayer produced no motor fuel tax license or decal permitting operation in Illinois.

Conclusions of Law:

On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's *prima facie* case of tax liability under the assessment in question. Accordingly, by such failure, and under the reasoning given below, the determination by the Department that TAXPAYER is subject to the penalty imposed pursuant to the Illinois Motor Fuel Use Tax Act must stand as a matter of law. In support thereof, the following conclusions are made:

35 ILCS 505/13a.4 provides in part as follows:

§ 13a.4. Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction. Application for such license and decals shall be made annually to the Department on forms prescribed by the Department.

On and after January 1, 1985, external motor fuel tax decals shall be conspicuously displayed on the passenger side of each commercial motor vehicle propelled by motor fuel operating in Illinois, except buses, which may display such devices on the driver's side of the vehicle. Beginning with the effective date of this amendatory Act of 1993 or the membership of the State of Illinois in the International Fuel Tax Agreement, whichever is later, the decals issued to the licensee shall be placed on both exterior sides of the cab.

Taxpayer through his testimony admitted he did not comply with Section 13a.4 above. He stated he was operating in Illinois handling their own product and dumping same in Illinois.

In the instant case taxpayer has admitted to using Illinois highways on several occasions as set forth below as follows:

Well, we did purchase fuel over here, too. We fueled our trucks there in Carbondale at an Amoco station, which I have the receipts. I didn't bring them with me, but I have those. We did it by credit card. Tr. p. 6

Taxpayer did not follow the procedures set forth in Section 13a.5 and therefore was issued a written warning citation on June 14, 1994 and subsequently the Department issued its Notice of Penalty Liability as provided in 35 ILCS 505/13a.6(b) below:

§ 13a.6. In addition to any other penalties imposed by this Act:

(a) If a commercial motor vehicle is found operating in Illinois (1) without displaying a valid motor fuel use tax license, when required by Section 13a.4 of this Act; (2) without displaying a valid single trip permit issued by the Department, when required by Section 13a.5 of this Act; or (3) without displaying 2 like-numbered valid motor fuel use tax decals, when required by Section 13a.4 of this Act, or in lieu thereof only for the period specified on the temporary permit, a valid 30-day International Fuel Tax Agreement temporary permit, the operator is guilty of a petty offense.

(b) If a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license required by Section 13a.4 or without a valid single trip permit when required by Section 13a.5 of this Act, the operator must pay a minimum of \$1,000 as a penalty.

Improper use of the motor fuel use tax license, single trip permit, or decals provided for in this Section may be cause for revocation of the license.

For purposes of this Section, "motor fuel use tax license" means a motor fuel use tax license issued by the Department or by any member jurisdiction under the International Fuel Tax Agreement, or a valid 30-day International Fuel Tax Agreement temporary permit.

Based on all the evidence and testimony I recommend that the Notice of Tax Liability be affirmed in its entirety.

Administrative Law Judge